

IN THE PROVINCIAL COURT OF NEW BRUNSWICK

IN THE MATTER OF AN ONGOING CRIMINAL INVESTIGATION

IN THE MATTER OF AN APPLICATION FOR AN
EXTENSION OF AN ORDER PURSUANT TO
SECTION 487.3 OF THE CRIMINAL CODE OF CANADA

AFFIDAVIT

This Affidavit is filed in support of the application filed with the Provincial Court of New Brunswick on the 7th day of June, A.D. 2012 requesting an extension of the Order made by Chief Provincial Court Judge R. Leslie Jackson on the 16th day of December, A.D. 2011 sealing all records of the Provincial Court until the 15th day of June, A.D. 2012 with respect to the issue and execution of search warrants issued pursuant to Sections 487; 487.01 and a Production Order issued pursuant to Section 487.012 of the Criminal Code of Canada and dated:

1. July 13, 2011 pursuant to Section 487;
2. July 13, 2011 pursuant to Section 487.01;
3. July 20, 2011 pursuant to Section 487;
4. July 20, 2011 pursuant to Section 487.01;
5. July 25th, 2011 pursuant to Section 487.012
6. August 4, 2011 pursuant to Section 487.01
7. August 11, 2011 pursuant to Section 487
8. November 15, 2011 pursuant to Section 487
9. November 15, 2011 pursuant to Section 487.01

and to be stored in a separate place in the office of the Clerk of the Provincial Court and not to be disclosed except pursuant to the further order of a court of competent jurisdiction.

I, Constable Stephen Davidson, a peace officer and member of the Saint John Police Force of the City of Saint John, County of Saint John and Province of New Brunswick, MAKE OATH AND SAY AS FOLLOWS:

1. I, Constable Stephen Davidson, am a member of the Saint John Police Force and have been so employed since 1999.
 2. I am presently attached to the Major Crime Unit of the Saint John Police Force and have been so since July 2011.
 3. I have read and reviewed a file prepared by members of the Saint John Police Force as it relates to the death of Richard Henry Oland. Unless otherwise stated, I believe the information contained therein to be truthful and accurate.
 4. On July 7th, 2011, Richard Henry Oland, a well known and prominent businessman in Saint John was found deceased in his office located at 52
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Canterbury Street in the City of Saint John, County of Saint John and Province of New Brunswick. As a result, the Saint John Police Force commenced an investigation into the death of Richard Henry Oland which has now been ruled a homicide.

5. That the investigation commenced on July 7th, 2011 and is an active, ongoing, complex investigation and no charges have been laid in connection with this homicide.
 6. Since July 7th, 2011, investigative procedures have not ceased and the investigation currently is very active.
 7. It is difficult to determine how much longer this investigation will continue due to the potential results that will be received from evidence already gathered that has been analyzed or is currently being analyzed.
 8. It is my belief, based upon my experience, that police investigations, especially homicide investigations, do not have a set time frame in which they operate but are dictated by the evidence gathering, analysis, investigational strategies and the necessity of being thorough.
 9. That at the present time there are two members of the Major Crime Unit including myself and two members of the Saint John Police Force Identification Unit tasked with this investigation. Other members of the Saint John Police Force are brought in as needed.
 10. I have been advised by these police officers the analysis of exhibits includes an initial process conducted by the investigating police force prior to the exhibits being forwarded to the RCMP Forensic Laboratories for further analysis and this initial process has been completed. This initial process includes the examination and processing in preparation of the exhibits being forwarded to the RCMP Forensic Laboratories. Also the exhibits are assigned priority by what the investigators believe to be the relevancy of each exhibit.
 11. That it is my belief that during the course of this ongoing investigation there have been 378 exhibits seized so far of which 243 will require forensic analysis.
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12. That with all murder investigations a great deal of work must be conducted by investigators assigned to the Saint John Police Force Forensic Identification Unit which is responsible for facilitating the analysis of specific exhibits seized. Constable David MacDonald and Sergeant Mark Smith of the Saint John Police Force Identification Unit have been assigned to this investigation.

13. I am advised by members of the Saint John Police Force Forensic Identification Unit that the initial processing including the taking of photographs, visual examinations, examinations with forensic light sources and chemicals is complete. Those examinations must in some circumstances be done in stages and each stage might have to be done on separate days. Some of the exhibits take several hours and/or days of processing at this initial stage. Any observations or findings made at this stage are noted and then further follow up is required with the RCMP National Forensic Services.

14. The RCMP National Forensic Services have in place a policy for procedures in submitting exhibits to them. This policy is in place for all policing services that utilize their services.

15. I have been advised by a member of the Saint John Police Force Identification Unit that the process includes:

- (a) Identifying the exhibits to be sent to the laboratory after the initial process has been completed by the investigating police service;
 - (b) Contact the laboratory and speak with a case adviser who will assign a forensic strategist to the file. The forensic strategist maintains a case load of other cases, he/she is actively handling;
 - (c) Liaise with the assigned forensic strategist explaining the file in general and the exhibits seized. The strategist will then prioritize the exhibits according to the highest probability of results.
 - (d) The investigating force must then follow-up with a formal submission request, which describes the forensic case, which exhibits the investigating police force would prefer to send, explaining where each exhibit fits into the case, its relevancy and the initial findings on the exhibit.
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- (e) Follow-up from the strategist may arise requiring the form to be re-submitted or updated;
- (f) The laboratory staff of the RCMP National Forensic Services will then decide which exhibits are accepted ;
- (g) Accepted exhibits are packaged and delivered. Once delivered a diary date is assigned by the laboratory, which in the case of a major file may run anywhere between 70 and 120 days, unless an accelerated date is given, which occurs occasionally. Usually on or before the assigned diary date, the results may arrive. On some occasions, the investigating force may receive a delay notification with the new diary date. In this investigation there have been delay notifications received.
- (h) No further exhibits may be submitted until such time as previous results are reported. Further submissions are not given any priority.

16. I am advised by a member of the Saint John Police Force Identification Unit involved in this investigation of the following:

- (a) Of the first request submitted to RCMP National Forensic Services only 5 were approved for submission;
 - (b) That the 5 approved were sent on July 21, 2011 an accelerated diary date was given. The results were received on August 8, 2011;
 - (c) A second submission of exhibits was sent, of which 8 were approved. These were sent on September 12, 2011 with results received November 7, 2011;
 - (d) Subsequently a third submission was sent and 11 exhibits were approved. These exhibits were sent November 29th and 30th, 2011.
 - (e) On February 2, 2012 an e-mail was sent to the RCMP National Forensic Services inquiring on the status of this third submission. In response, we were advised the diary date was delayed to March 6, 2012. On March 1st, 2012 and March 19th, 2012 results were received.
 - (f) A fourth submission of exhibits was sent and only 19 exhibits were approved. The exhibits were sent April 3rd and April 24th, 2012. On June
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8, 2012 the Identification Unit was advised of a delayed diary date of July 20th, 2012; however on June 26th, 2012 the results were received.

(g) On occasion exhibits sent to the RCMP National Forensic Services may be further examined and processed by experts within the lab itself, which could account for further delay. I am aware this has happened on one occasion with an exhibit submitted which may have delayed the processing of the exhibit.

17. It is the intention of the Saint John Police Force to submit further exhibits to the RCMP National Forensic Services Laboratories once all previously submitted exhibits are returned.

18. It is my belief that the Saint John Police Force investigators have been diligently pursuing this aspect of the investigation and the amount of time awaiting responses is outside of our control.

19. That besides the use of the RCMP National Forensic Services, there are exhibits seized which require the assistance of the RCMP Technological Crime Unit as the specialized services provided are not presently available within the Saint John Police Force due to its highly specialized nature. The Saint John Police Force does not get priority over other policing agencies or other cases when such exhibits are submitted.

20. I am advised by members of this unit that although they have received the exhibits they are placed in a queue with other cases they are working on or will be working on, they are not assigned any special priority.

21. That an analyst had to be assigned by the RCMP Technological Crime Unit in relation to this investigation due to the volume, however, because of health related reasons he is now unable to continue and another analyst has been assigned. As well, the extraction and copying of information is a lengthy and time consuming process at times requiring months to process from start to finish.

22. Once results are received, those results must be analyzed for relevant information.

23. Any results received from the RCMP Technological Crime Unit has to be then examined to determine if relevant, which requires a person with expertise in computer technology to review it and report to the investigators.
24. I am aware that a second forensic expert, acting with the Saint John Police Force, has also suffered health problems and has only recently returned to work and has just begun to process those results. This process is a lengthy undertaking.
25. It is my belief that as this investigation continues, and as further evidence is gathered and its relevance is determined the release of the information contained within the warrants issued and information to obtain those warrants and the production order may compromise the ongoing active investigation as it is difficult to assess the direction the investigation will take in the future. Further, as the relevance of the exhibits is determined, it may affect the relevance of the evidence already in our possession or more importantly lead to other evidence not in our possession. If the warrants and information to obtain are released, the persons/or persons responsible for this homicide may have opportunity to destroy or hide such evidence before it may be recovered.

S. 487.3(2)(a)(ii)
COMPROMISE THE NATURE AND EXTENT OF
AN ONGOING INVESTIGATION

26. That until October of 2011, Constable Rick Russell was the lead investigator in this investigation. In October of 2011, Constable Russell retired at which time I was assigned his role of lead investigator. Prior to my assignment, I was actively involved in this investigation and in my 13 years as a police officer prior to that I have been involved in multiple police investigations.
27. That it is my belief based on my experience and training that in a vast majority of these investigations there exists what I believe to be "hallmark evidence". This hallmark evidence refers to certain aspects of evidence which are unique and case specific. This evidence should therefore be protected as this evidence may only be known to the person or persons responsible, or an unknown witness, yet to be identified or a witness already identified who
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might have further evidence. It is my belief such hallmark evidence is the basis upon which crimes are solved. Such hallmark evidence should be protected and not disclosed to the public and become known to all thereby losing its effective purpose.

28. It is my belief based on my experience and training that hallmark evidence may include such things as the manner and cause of death, the mechanism of death, the time of death, the motive, who last saw the deceased, when, and post offense conduct, although this last is not exhaustive.
29. It is my belief that if hallmark evidence is protected it may be used to prevent false confessions or prevent a person making false or misleading statements to the investigating police force which could result in significant loss of time, effort and resources.
30. It is my belief if hallmark evidence is disclosed to the public any new witness may be tainted because of the public knowledge of such evidence. Further, the release of such hallmark evidence would potentially affect the reliability of any witness who might come forward in the future.
31. It is my belief there does exist other evidence techniques that are effective tools used by police during the course of an investigation. Hallmark evidence often forms an integral part of such techniques and if such hallmark evidence becomes public knowledge these techniques are no longer available to be used or as effective.
32. The release to the general public of hallmark evidence would, in my belief, compromise the nature and extent of this ongoing investigation.
33. In this particular investigation, there exists evidence I believe would be classified as hallmark evidence and this evidence would be readily identifiable as it is contained within the search warrants, production orders and the information to obtain each.

34. I am aware that during the course of this ongoing investigation 60 interviews have been conducted.

35. It is my belief that there may be as yet unidentified witnesses who will have to be interviewed as the investigation continues as well witnesses to be re-interviewed.

36. I am aware that contained within these warrants and information to obtain the search warrants are a large number of names of individuals who have been interviewed and have provided information in this investigation.

37. It is my belief that there currently exists a high level of general public and media interest in the homicide of Richard Henry Oland.

38. No charges have been laid at this stage.

39. It is my belief that the release of such information, which could lead to the identification of these persons, which in turn could prejudice the interest of an innocent person for the following reasons:

- (a) Private confidential and personal information has been given in this investigation. Although such information may be relevant to the investigation, such evidence may not be admissible at trial;
- (b) Expressed opinions of police officers as to the veracity of persons interviewed during the investigation;
- (c) It is my belief that given the high level of general public and media interest, witnesses already identified or possibly yet to be identified may be reluctant to come forward if they believe they may be identified publicly as a witness or have given information to the police.
- (d) The information provided may be highly subjective.

40. That I have been advised that persons who were named in initial media coverage and had assisted in the early stage of this investigation are now hesitant to continue to cooperate due to influences outside of the Saint John Police Force.

41. That I have spoken to 3 persons who have been approached by [REDACTED] on a number of occasions. After speaking with these [REDACTED] they are now questioning whether they are prepared to continue

to offer their assistance in this investigation as a result of the actions of these

42. It is my belief that to properly prevent the prejudice to the interest of an innocent person or persons, their name or names and the nature of the information provided as outlined in the information to obtain the warrants and production orders should not be unsealed as it is the most appropriate and certain way to safeguard this interest. It is my belief to simply redact their names would allow others given the knowledge of what these persons have told the police and set out in the information to obtain the warrants and production orders to infer correctly their identity or perhaps worse incorrectly identify others.

43. It is my belief that a publication ban would not be sufficient to prevent prejudice to the interest of an innocent person or persons as the search warrant materials would still be available to the general public. With the social media such as the internet, Facebook etc. the information would be quickly and widely disseminated, potentially creating rumors and false information.

SWORN TO at the City of Saint John,
County of Saint John, and Province
of New Brunswick this 6th day of
July, A.D. 2012 before me:

Commissioner of Oaths being a Solicitor
Jill M. Knee

John M. Kneel

Constable Stephen Davidson